THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.360 of 2015

ORDER:

This Revision is filed challenging the order dated 24.11.2014 in I.A.No.54 of 2013 in O.S.No.106 of 2008 on the file of VI Additional District Judge, Kakinada.

2. The petitioners herein are plaintiffs in the suit. The suit was filed by them for partition of the plaint schedule properties and for separate possession of 1/3rd share therein.

3. A written statement was filed by the 2nd respondent in the year, 2009 disputing the suit claim. The 4th respondent also filed a written statement.

4. No further proceedings in the suit, such as, framing of issues, have taken place and trial also has not commenced in the suit.

5. I.A.No.54 of 2013 was then filed under Order VIII Rule 9 of CPC by the petitioners praying the Court to receive the rejoinder. This application was filed on 11.05.2012.

6. In the affidavit filed in support of the application, it is stated that the petitioners are illiterates; they were not aware of the Court litigation; they were compelled to change the counsel; and that while getting ready for trial, they were advised to file rejoinder, as several new and false allegations were made in the written statement filed by respondents 2 and 4. They claimed that they were not aware of the facts and in view of the legal advice now obtained by them they may be allowed to file a rejoinder. Along with the said application, a copy of the rejoinder was also filed.

7. Counter-affidavit was filed by the 4th respondent opposing the said IA. He contended that the rejoinder is being filed only to fill up the lacuna in the plaint and the petitioners are not entitled to do so.

8. By order dated 24.11.2014, the Court below dismissed the said IA. It held that Order VIII Rule 9 CPC permits rejoinder to be filed only if the defendants filed written statement by way of counter claim or set off and since the respondents have not filed any counter claim or set off, permission to file rejoinder cannot be granted.

9. Challenging the same, this revision is filed.

10. Learned counsel for the petitioner contended that the suit is filed for partition of the plaint schedule

properties; that the petitioners are illiterates; that the earlier counsel had not instructed them of the necessity to file rejoinder after the written statement was filed; the present counsel advised them to file rejoinder, since several new facts were stated in the written statement; and therefore, permission ought to have been granted to file a rejoinder.

11. Order VIII Rule 9 of CPC states that no pleading subsequent to the written statement of a defendant other than by way of defence to set off or counter-claim shall be presented except by the leave of the Court, and upon such terms, as the Court thinks fit.

12. This provision does not mean that only where the written statement raises a defence of set off or counter claim, a rejoinder will be allowed, but it indicates that where a written statement raises a claim by way of counter claim or set off, rejoinder is allowed without the leave of the Court. But in other cases, where no such counter claim or set off is raised in the written statement, leave of the Court is required to enable the plaintiff to file a rejoinder.

13. The Court below, unfortunately, did not interpret Order VIII Rule 9 CPC in the above manner and proceeded on the footing that there was no such set off or counter claim in the written statement filed by the respondents 1 and 4 and hence, no rejoinder can be

permitted to be filed. In my opinion such a view cannot be sustained.

14. In any event, the suit being one for partition, and the petitioners being ladies and illiterates, they obviously relied on their counsel, who advised them about the necessity to file a rejoinder, as soon as the written statements were filed by respondents 1 and 4. Though such advice was not given by the earlier counsel, when they engaged another counsel subsequently, they were advised to file a rejoinder. So they filed the IA seeking leave of the Court to file a rejoinder.

15. Since admittedly issues in the suit were also not framed and trial has not commenced, no prejudice would be caused to the respondents if the petitioners are permitted to file a rejoinder.

In the facts and circumstances of the case, I am of the opinion that the petitioners are entitled to grant of leave to file rejoinder.

16. Therefore, the order dated 24.11.2014 in I.A.No.54 of 2013 in O.S.No.106 of 2008 on the file of VI Additional District Judge, Kakinada is set aside. The said IA is allowed and the petitioners are directed to file rejoinder in the suit within four weeks from the date of receipt of a copy of this order, if not already filed.

17. In view of the same, the Civil Revision Petition is

allowed. No costs.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

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M.S.RAMACHANDRA RAO,
J

June 17th, 2015.
ssp